DRN-4331991

The complaint

Mr M's representative, a Claims Management Company (CMC), complains on his behalf that he was mis-old a unit-linked Wealth Builder – a long term savings plan referred to as *"the plan"* – by Citibank Life now Sun Life Assurance Company of Canada (U.K.) Limited, trading as Sun Life Financial of Canada, referred to as *"Sun Life"*.

In summary, the CMC said:

- There's no evidence that Mr M's attitude to risk (ATR) was established to ensure that the advice was suitable.
- There's no evidence that he was made aware (in a meaningful way) of the charges, especially if the plan is surrendered early.
- More suitable alternative products – within Sun Life's range – weren't discussed, such as the Free Standing Additional Voluntary Contributions (FSAVC) – would've provided valuable tax relief – or Capital Builder for 10 years with a charge free extension at the end of 10 years. The latter would've provided greater tax efficiency and greater return owing to the lower charges.
- There's no mention of the clustering arrangement available through the Capital Builder which would have enabled the client to access funds by 'breaking off clusters' as required.

To put things right, the CMC says that Mr M should be put in the position he would've been in but for the error.

What happened

In October 1993, Mr M was sold the plan with a term of 27 years. It was a long term savings plan designed to provide a lump sum upon maturity when he turned 65. The initial monthly premium was £61.80, which was subject to increase each year.

At the time, it was recorded that Mr M:

- was in his late thirties, single, with no financial dependents, and earning around £23,500 a year;
- had a net monthly income of £1,330, with outgoings of £956, and £374 net monthly disposable income. He was considered a basic rate taxpayer;
- owned a property worth £50,000 with a £24,500 mortgage outstanding over a term of 16 years;
- had savings of £2,500 and £6,000 invested in shares.

It was also recorded that Mr M wanted to save on a regular basis for his long-term personal future and financial security.

In March 1993, it was recorded that Mr M's ATR was "one" on a scale of "one to five". It was also recorded that he chose to invest in the Perpetual Managed fund which was a moderate/balanced risk fund.

In August 2016, 23 years after taking out the plan, Mr M surrendered the plan and received back £19,411.

In March 2023, Mr M complained to Sun Life, but it didn't uphold the complaint. In a Final Response Letter (FRL) dated May 2023, it said:

- The recommendation was suitable and met Mr M's needs given his age and circumstances. In other words, the plan was suitable for him given his long-term savings objectives.
- Mr M's ATR showed that he wanted a spread of investment risk between low and high risk which was supported by his investment in shares.
- As the plan was sold before 1995, it wasn't required to keep a record of any alternative products discussed. Neither was it expected to outline the fees and charges associated with the plan – the information was provided in the literature.
- The plan gave Mr M flexibility to take withdrawals or partial surrenders without being limited to the clusters. Mr M utilised this option by taking partial surrenders (or withdrawals) in 2000, 2010 and 2013 totaling £21,383.
- The 10 year plan mentioned by the CMC wouldn't have met Mr M's long term savings objective, given that it had a 10 year term and he wanted savings until his retirement.
- In August 2016, Mr M surrender the plan for £19,411. In total he received a sum of £40,794 from his plan, including the £34,455 he paid in premiums.

Unhappy with Sun Life's response, Mr M referred his complaint to our service.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- Based on what HSDL says, she's satisfied that alternative products were discussed. But weren't considered suitable.
- Based on Mr M's circumstances at the time, notwithstanding his intentions to get married, have children and have a comfortable future – she can't say that the recommendation was unsuitable.
- It was recorded that the following features were Mr M's priority in order of importance:
    - 1. Capital creation.
    - 2. Lump sum investments
    - 3. Planning for retirement
    - 4. Family protection in event of early death.
- Capital creation (over the long term) formed part of Mr M's (top) priority. The plan was suitable for this purpose.
- The initial monthly contribution (increasing annually in line with inflation) was affordable for Mr M given his monthly disposable income.
- It's likely that Mr M understood the likely risks involved. He was provided with the key documentation that made clear the nature and operation of the plan.
- The evidence shows that Mr M benefitted from interest free loan feature of the plan on three separate occasions during the policy term.
- Sun Life accepts the point about Mr M's ATR, and it is unhelpful that evidence of this isn't clearer. But the lack of detail doesn't, on a balance of probabilities, make the recommendation (automatically) unsuitable.
- Mr M's previous investment in shares suggests that he isn't risk averse.

The CMC disagreed with the investigator's view and asked for an ombudsman's decision. In summary, it said:

- 95% of its Wealth Builder complaints are upheld because Sun Life has admitted that this was a “terrible contract” that should never has been recommended.
- It was written to the age of 65 which is unsuitable for investors in their 20’s and 30’s, with many medium life terms ahead of them.
- Sun Life has undergone restructuring and now routinely rejects these complaints that it previously upheld.
- The plan was promoted because the length of term was correlated to a much bigger commission. No shorter-term contracts were discussed.
- Why was there no discussion of pension contracts.

The investigator having considered the additional points wasn’t persuaded to change her mind. She provided links to cases that weren’t upheld, demonstrating its not true we always uphold these complaints – the uphold cases presented different personal circumstances. Despite what the CMC says, Mr M was employed and had his company pension scheme which he expected to benefit from at age 63. Mr M declined to discuss pensions.

As no agreement has been reached, the matter has been passed to me for review.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having done so, I agree with the investigator’s conclusion, for much the same reasons. I’m not going to uphold this complaint.

On the face of the evidence, and on balance, despite what the CMC says, I can’t safely say that the recommendation was mis-sold or that it was unsuitable given Mr M’s circumstances.

Before I explain why this is the case, I think it’s important for me to note I very much recognise Mr M’s strength of feeling about this matter. The CMC has provided submissions to support the complaint, which I’ve read and considered carefully. However, I hope he won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn’t to address every single point raised under a separate subject heading, it’s not what I’m required to do in order to reach a decision in this case. In other words, I don’t have to comment upon every single point made. My role is to consider the evidence presented by the CMC and Sun Life, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. In the circumstances, I don’t need any further evidence to make my decision.

I don’t uphold this complaint, in summary, for the following reasons:

- Mr M only surrendered the plan in 2016, after 23 years of maintaining the plan. This doesn’t suggest that the plan was something that he didn’t want or was unhappy with. On the contrary, it suggests that he was content with the plan – and was aware of its long-term nature– and that it was affordable despite having annually increasing premiums that went up with inflation.
- On the face of the evidence, and on balance, I can’t say that the plan prevented Mr M from pursuing his medium-term life objectives. I note that he was in his late thirties

and was already a homeowner so wasn't saving up for any specific medium-term objective as such.

- I note that the plan gave Mr M flexibility to take withdrawals or partial surrenders without being limited to the clusters. I note he utilised this option by taking partial surrenders (or withdrawals) in 2000, 2010 and 2013 – totalling £21,383 – suggesting that he had access to his funds if he needed to for any purpose.
- That said, I've seen nothing to suggest why he didn't just maintain the plan for another four years, until the age of 65, when the plan was designed to mature. But that was a matter for him, I note he chose to surrender the plan when he did of his own volition, and not as a result of any advice or guidance from Sun Life. So, that's not something I can blame Sun Life for.
- I note what the CMC says about alternative (more suitable) products, but I'm not looking at whether or not there were more suitable products, I'm only considering whether or not the recommendation was suitable. For the reasons set out above, I'm satisfied that it was.
- Like the investigator, I'm satisfied that the recommendation met Mr M's long-term savings objectives, at the end of which receive a lump sum. I note his number one priority out of the five options was capital creation, which the plan met.
- I don't think Mr M was risk averse, and it's likely that he was aware of the general risks involved. If he wasn't or needed further clarification, he had the option to discuss this with Sun Life.
- Despite what the CMC says, I note that Mr M was recorded as basic rate taxpayer, therefore was unlikely to have to pay higher taxes. I note this plan was designed for basic rate taxpayers so Sun Life could only recommend something suitable.
- I don't think a 10-year plan would've been suitable given Mr M's long-term savings objectives. Based on how long he maintained the plan, albeit with the benefit of hindsight, it doesn't look like he was interested in a 10-year plan. It's arguable that it was the opposite of what he wanted and probably more expensive. Therefore, I don't think Sun Life was wrong not to advise Mr M to take the 10-year plan out instead.
- In other words, despite what the CMC says, I'm persuaded by HSDL's explanation that the 10-year plan was unlikely to meet Mr M's long-term savings objective – namely savings until the age of 65.
- Notwithstanding the above points, I note the CMC says that alternative products weren't discussed. Based on what HSDL says, I understand that it wasn't obliged to record any alternative products discussed at the time, so I can't safely say that alternatives weren't discussed and discounted, as argued by the CMC. On the face of the evidence, I think it's more likely a pension option was discussed but discounted by Mr M. I note he had a pension with the company he was working for, and this might explain why he wasn't interested in discussing pensions.
- I note what the CMC says about complaints involving the plan that have been upheld. However, this doesn't mean that every complaint must be upheld, or that our service is wrong not to do so. Cases have to be decided on their individual facts – no two cases are the same and even a small difference can result in a different outcome. The CMC will also be aware that an ombudsman isn't bound by the decisions of other ombudsman.
- Despite what the CMC says, I think it's unlikely that key policy documentation wouldn't have been sent, that made clear the nature and operation of the plan, as well as the charges involved. It's unlikely that Mr M would've maintained the plan for 23 years if he didn't know how it worked or was unhappy with the charges.
- In conclusion, I think the plan met Mr M's long-term objective for savings and payment of a lump sum, as well as the option to withdraw funds if needed. I also note the plan was affordable – given that he was in his late 30's, employed and already owned his own home – it would've allowed him to pursue any medium-term

objectives. Overall and on balance, despite what the CMC says I think the recommendation was suitable.

I appreciate that Mr M will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I can't safely say that Sun Life behaved unreasonably such that this complaint should be upheld.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give Mr M what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 February 2024.

Dara Islam
Ombudsman